S.B.Civil Revision Petition No.54/2004
Smt. Renu & ors. vs. Babu Lal

Date of Order: 24.7.2006

HON'BLE MR. PRAKASH TATIA, J.

Mr. J.P. Joshi for the petitioners.
Mr. L.D. Khatri, for the respondent.

This revision petition is against the order dated 3.2.2004 passed by the learned Civil Judge(Sr.Div.), Jaisalmer, by which the executing court allowed decree-holder's application dated 2.6.1995 and 5.11.1998 filed under Section 151 and directed the judgment debtors to remove the structure which they have raised in violation to the compromise decree dated 19.12.1992 within a period of 15 days and in case, the judgment debtors will not remove the illegal construction, the decree holder shall be entitled to remove the construction at the cost of the judgment debtors. The trial court by this order deferred the decision for punishing the judgment debtors for disobedience of the court's order.

It will be worthwhile to mention here that the suit between the parties was decided in the presence of the Motbirs in Lok Adalat on 19.12.1992 and a decree was passed in terms of the compromise. It has been provided in the decree that the area demarcated in colour red in site plan measuring 130.6 x 5 ft. shall remain the common property of the plaintiff and the defendants and both the parties shall be entitled to open the windows, gates, gutters etc. It was also made clear that no party would open the windows opposite to the windows of the other.

The defendants were required to construct a new wall at the place marked A to B in the site plan and C to D wall was to remain in the ownership of the plaintiff. It is submitted by the petitioner that in terms of the compromise decree, both the parties raised wall in the spirit of the decree obtained by compromise. The plaintiff-decree holder submitted the execution petition before the executing court alleging therein that the judgment debtor No.3 Deen Dayal raised the wall on common lane of 5 feet upto the length of 68 feet and thus occupied the entire lane of 5 feet. It is also alleged that the judgment debtors constructed a room and also stair case and left 5 feet lane at different place. The execution petition was filed when the construction was going on, therefore, the decree holder also prayed for interim order, upon which, the executing court passed the order on 15.5.1994 directing both the parties to maintain the status-quo and a Commissioner was appointed, who submitted report after inspection of the site. The executing court even by order dated 2.3.1995 directed the petitioner-defendants to remove the encroachment made over the five feet lane within a period of 15 days.

The judgment debtors raised several issues against the execution of the decree but the executing court, after considering the entire facts of the case, passed the order on 3.2.2004, referred above, which has been challenged by the petitioners.

One of the grounds raised in the revision petition before this Court is that the decree holder raised the objection regarding non-compliance of the decree after two years and the execution proceedings continued before the learned executing court for nearly eight years. It is submitted that the executing court cannot go beyond the decree and interpret in the manner, not providing in the decree, whereas in this case, the executing court by wrong interpretation of decree, enlarged the scope of decree. The petitioners also raised objection against the finding of fact recorded by the executing court about the measurements as well as the location where the constructions were raised by the judgment debtors.

The learned counsel for the petitioners tried to assail the order but I do not find any illegality in the order passed by the court below. Rather, it appears that the executing court very meticulously considered the facts of the case and, thereafter, passed the impugned order. The question of fact determined by the executing court has not been vitiated because of any reason.

This Court is not finding any reason to interfere while exercising jurisdiction under Section 115 of the Code of Civil Procedure in the order dated 3.2.2004. Hence the revision petition is dismissed.

(PRAKASH TATIA),J.

mlt.